

Melody



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Price/CIRI Construction
File: B-230603
Date: May 25, 1988

DIGEST

1. Where contract was awarded to low bidder which alleged mistake in its bid before award and parties agreed that contractor could pursue mistake claim, contract should be reformed to include cost of diesel generator and certain related costs where contractor's original workpapers contain clear and convincing evidence that those costs were mistakenly omitted from its bid.
2. Contractor alleging mistake may recover cost of generator, but not claimed labor costs and markup associated with the generator, however, since there is insufficient pre-bid opening evidence in the record demonstrating that contractor intended to include those amounts in its bid. Other mistakes in contractor's prices for items unrelated to the generator, discovered by contracting agency after award, are not relevant to whether there is clear and convincing evidence of the generator mistake, and contractor may waive these unrelated mistakes since the effect on the bid if the mistakes were corrected would be negligible.

DECISION

Price/CIRI Construction requests our review of the decision by the Corps of Engineers to deny Price/CIRI's preaward request to correct a mistake in its low bid under invitation for bids No. DACA85-86-B-0026, issued by the Corps for alteration work to the central heat and power plant at Eielson Air Force Base, Alaska. Notwithstanding the alleged mistake, Price/CIRI was awarded the contract at its bid price. The parties agreed, however, that Price/CIRI retained the right to seek final resolution of its preaward claim for bid correction, thus preserving Price/CIRI's right to submit the matter to our Office. See Vrooman Constructors, Inc., B-218610, Oct. 2, 1985, 85-2 CPD ¶ 369, aff'd on reconsideration, B-218610.2, Mar. 17, 1986, 86-1 CPD ¶ 257. We find that Price/CIRI's contract should be reformed to correct the mistake in the amount of \$664,500.

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The facts are not in dispute. Price/CIRI's bid (\$17,478,456) was \$1,171,544 less than the second low bid, submitted by Hoffman Construction Company (\$18,650,000). Both bids were below the government estimate (\$21,780,000). Shortly after bid opening on August 13, 1986, Price/CIRI orally advised the Corps that it had made a mistake in the preparation of its bid. By letter dated August 18 to the Corps, Price/CIRI explained in detail the nature of the claimed mistake, which concerned its failure to include in its bid the price of a major piece of equipment, a 2500 kilowatt diesel generator, which was to be installed as part of the project.

According to Price/CIRI, in preparing its bid it initially planned to perform all the mechanical work for the project itself rather than use a subcontractor. As a result, Price/CIRI prepared an estimate of the labor and construction costs associated with the mechanical work and solicited proposals from various vendors to provide the equipment which Price/CIRI would install as part of that work. A computer spreadsheet reflecting all the costs for Price/CIRI to perform the work in-house was prepared before bid opening.

Price/CIRI states that approximately 10 minutes before bids were due, it received a telephone quotation for the mechanical work from another firm, University Mechanical. To determine whether to use University's quotation, Price/CIRI's estimator calculated the in-house estimate for the work covered by the quotation by reference to the computer spreadsheet showing the components and costs for Price/CIRI's total estimate for in-house performance. According to Price/CIRI, this calculation consisted of 13 items shown on the spreadsheet, including the cost of installing the diesel generator. The estimator made marks near all of the items on the spreadsheet. The costs for the 13 items totaled \$6,283,645, to which the Price/CIRI estimator states that he added \$325,000 in miscellaneous costs, for a total of \$6,608,645. Since the subcontractor's quotation for the work (\$5,662,300) was lower than this amount, Price/CIRI then adjusted its bid by subtracting its estimate of in-house performance and adding the subcontractor's quotation. Based on this calculation, which is reflected in handwritten notations on the computer spreadsheet, Price/CIRI submitted its bid of \$17,478,456.

Price/CIRI states that "within minutes" of submitting its bid, upon reviewing the "scope of work" letter originally submitted by University to define the work covered by its quotation, it discovered that the University quotation included only the piping installation for the generator, not the generator itself. Accordingly, Price/CIRI's bid should

have, but did not, include the cost for Price/CIRI itself to install the generator; instead, Price/CIRI had erroneously subtracted its estimated cost for in-house installation in the belief that it was covered by the University quotation. Price/CIRI states that the omitted amount is \$716,163, consisting of \$654,000 for the generator; \$5,400 for rental of a crane for installation; \$1,500 for tank coatings; \$3,600 for grout; and \$17,560 for labor. If corrected to reflect the amount which Price/CIRI claims was omitted, its bid (\$18,194,619) would be \$455,381 or approximately 2 percent less than the next low bid (\$18,650,000).

Price/CIRI initially submitted its claim to the Corps in August 1986. By letter dated January 6, 1987, the Corps asked Price/CIRI to address three additional mistakes in its bid concerning cost elements unrelated to the generator, which the Corps had discovered upon review of the documents Price/CIRI furnished with its claim. By letter dated February 16, Price/CIRI agreed that there were three additional mistakes in its bid, two of which required increasing its price, and one of which required a large reduction. According to Price/CIRI, the cumulative effect of the additional mistakes was negligible. Its bid after correction for the claimed amount for the generator is \$18,194,619; if the additional three mistakes also were corrected, the bid would be reduced by \$52 to \$18,194,567. (In the protest, Price/CIRI is not seeking correction of the additional mistakes; its claim is limited to the omission of the generator.)

In a decision dated February 19, 1988, the Corps denied Price/CIRI's request to correct its bid to include the cost of the generator. In essence, the Corps concluded that while Price/CIRI's computer spreadsheet showed that a total amount (\$6,608,645) had been subtracted from the in-house estimate for the work covered by the subcontractor's quotation, Price/CIRI failed to provide clear and convincing evidence of each of the items comprising the total. In the Corps' view, the additional mistakes found after award cast further doubt on how the total amount subtracted was calculated.

As explained below, we find that Price/CIRI has provided clear and convincing evidence of its intended bid with regard to the only item at issue, the diesel generator.

A bidder who seeks upward correction of its bid prior to award must submit clear and convincing evidence showing that a mistake was made, the manner in which the mistake

occurred, and the intended price. Federal Acquisition Regulation § 14.406-3(a); Vrooman Constructors, Inc., B-226965.2, June 17, 1987, 87-1 CPD ¶ 606. The authority to correct mistakes is vested in the contracting agency and we will not disturb the agency's determination unless it lacks a reasonable basis. Vrooman Constructors, Inc., B-226965.2, supra. Here, Price/CIRI submitted the computer spreadsheet used in preparing its bid which shows each item of work, the individual components of the cost estimate for each item and the total estimated cost by item. There are handwritten markings beside 13 items on the spreadsheet, including the generator. According to Price/CIRI, the markings were made before bid opening when it was comparing the subcontractor quote for the mechanical work with its in-house estimate for the work. There are tick marks beside 11 items, including the generator; one figure is circled; and there is an asterisk beside the last figure with the amount "174,000.00" written beside the asterisk. When added, the 13 items total \$6,283,645. That total figure appears on another pre-bid opening worksheet submitted by Price/CIRI; that worksheet also shows that Price/CIRI added \$325,000 in miscellaneous costs to that figure, for a total of \$6,608,645, the total amount subtracted from Price/CIRI's in-house estimate on the computer spreadsheet.

In our view, the fact that the 13 items marked on the computer spreadsheet, plus the miscellaneous costs shown on another pre-bid opening worksheet, total the amount shown on the spreadsheet as subtracted from Price/CIRI's in-house estimate demonstrates that the total amount subtracted was composed of those items. Accordingly, since the generator is one of the items marked on the spreadsheet, we think Price/CIRI has shown that the cost of the generator was subtracted from its bid.

Contrary to the Corps' position, we do not believe that the additional three mistakes identified by the Corps after award was made preclude correction of the generator mistake. The only mistake for which Price/CIRI seeks correction is its omission of the generator; the additional errors, involving other items in the in-house estimate of the mechanical work covered by the subcontractor quotation, are not in issue in the protest. In our view, since the cumulative effect of these unrelated mistakes would only be to reduce Price/CIRI's bid by \$52 they are not relevant to whether there is clear and convincing evidence of the generator mistake. See Active Fire Sprinkler Corp., 57 Comp. Gen. 438 (1978), 78-1 CPD ¶ 328; Western Alaska Contractors, B-220067, Jan. 22, 1986, 86-1 CPD ¶ 66. In addition, we have allowed a bidder to waive a mistake where it is clear that the bid would remain low if the mistake

were corrected. Bruce-Anderson Co., Inc., 61 Comp. Gen. 630 (1981), 81-2 CPD ¶ 310.

In addition to demonstrating that a mistake was made, a bidder seeking correction must show by clear and convincing evidence the amount of the intended bid. Correction may be allowed, however, even though the intended bid price cannot be determined exactly, provided there is clear and convincing evidence that the amount of the intended bid would fall within a narrow range of uncertainty and would remain low after correction. J.C.K. Contracting Co., Inc., B-224538, Jan. 9, 1987, 87-1 CPD ¶ 43. In those circumstances, correction is limited to increasing the contract price only to the bottom end of the range of uncertainty. Western Alaska Contractors, B-220067, supra. Here, we believe that Price/CIRI has demonstrated its intended bid within an acceptably narrow range of uncertainty.

Price/CIRI claims correction for the omission of the generator and associated costs, consisting of \$654,000 for the generator; \$5,400 for rental of a crane for installation; \$1,500 for tank coatings; \$3,600 for grout; and \$17,560 for labor. These five cost elements are shown on a worksheet prepared by Price/CIRI before bid opening. With regard to the price of the generator itself, that worksheet shows prices from six vendors for the generator and related services; the worksheet also shows that Price/CIRI used the lowest quotation received (\$654,000) as the basis for calculating its in-house estimate. In addition, the worksheet lists the crane rental, tank coatings and grout as costs associated with installation of the generator, and there is no indication in the subcontractor's scope of work letter that its quotation covered those items. Accordingly, we find that Price/CIRI has established that those items would have been included in its price for the generator.

In addition to the cost of the generator, the crane rental, tank coatings, and grout, the worksheet shows amounts for two items--acid cleaning (\$5,250) and exhaust piping (\$3,000)--which Price/CIRI states were covered by the subcontractor quotation and therefore would not have been included in Price/CIRI's cost estimate of in-house installation of the generator. While we agree that the subcontractor's scope of work letter covers the exhaust piping, it is not clear from the letter that the acid cleaning also was covered. As a result, it is possible that Price/CIRI's price for the generator would have included that item. Further, the worksheet shows a total labor cost of \$30,505, representing 771 labor hours. Price/CIRI now states that, based on the work to be performed by the subcontractor, it would have required only 439 labor hours, totaling \$17,560, for the in-house portion

of the work. Price/CIRI has submitted no pre-bid opening documents supporting its calculation of the labor hours. As a result, based on this record we cannot conclude with certainty how much Price/CIRI would have included for labor in the generator price.

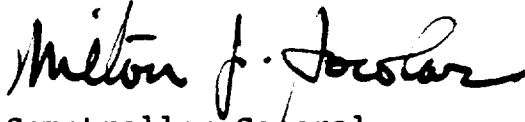
While the record thus is unclear regarding whether the cost of the acid cleaning (\$5,250) would have been included in Price/CIRI's bid and there is uncertainty with regard to how much would have been included for labor, we do not believe these uncertainties preclude correction of the bid. At most, adjustment for the acid cleaning and labor hours would increase Price/CIRI's bid by \$18,195.1/ In our view, this amount creates an acceptably narrow range of uncertainty (representing less than .10 percent of Price/CIRI's total bid), the upper range of which is still approximately 2 percent below the next low bid. See Vrooman Constructors, Inc., B-226965.2, supra.

The final element in Price/CIRI's intended price is a 5 percent markup (\$34,103) which Price/CIRI states it included on all its in-house costs. A pre-bid opening worksheet submitted by Price/CIRI contains a handwritten calculation showing that, after the in-house estimate for the mechanical work not covered by the subcontractor quotation was calculated, 5 percent was added. The computer spreadsheet showing the total bid as revised to incorporate the subcontractor quotation, however, does not show that 5 percent was added to the revised in-house estimate. In addition, the spreadsheet has columns on the last page with printed headings for profit, contingency, interest, subcontractor markup, and material markup. No entries, either printed as part of the original estimate or handwritten to reflect the revised estimate, appear under the heading for profit and there is no other indication that a 5 percent markup was added to Price/CIRI's in-house estimate. Under these circumstances, we do not believe that Price/CIRI's worksheet showing a handwritten calculation adding 5 percent is sufficient, standing alone, to show that Price/CIRI intended to add a 5 percent markup to its price for the generator.

Since Price/CIRI has not shown by clear and convincing evidence what amounts for labor and markup would have been included in its price, Price/CIRI may not recover for those

1/ This amount consists of \$5,250 for the acid cleaning plus \$12,945 in additional labor costs (\$30,505 shown on Price/CIRI's worksheet as the total labor cost for all the mechanical work minus \$17,560 for labor already included in Price/CIRI's claim for the generator).

items. Western Alaska Contractors, B-220067, supra.
Accordingly, we find that the Corps should reform
Price/CIRI's contract to increase the price by \$664,500 only
(\$654,000 for the generator; \$5,400 for crane rental; \$3,600
for grout; and \$1,500 for tank coatings).

A handwritten signature in black ink, reading "Milton J. Foster". The signature is written in a cursive style with a large, stylized "M" and "F".

Acting Comptroller General
of the United States